Michigan Law Review

Volume 53 | Issue 3

1955

Labor Law - Improper Union Objective - Lawfulness of Concerted Action to Prevent the Use of Labor Saving Devices

John F. Dodge, Jr. S.Ed.
University of Michigan Law School

LABOR LAW—IMPROPER UNION OBJECTIVE—LAWFULNESS OF CONCERTED ACTION TO PREVENT THE USE OF LABOR SAVING DEVICES—Plaintiff, an association of painting contractors, brought an action to enjoin strike activities by organized painters who had struck to obtain a contract provision prohibiting the use of pan-rollers while on union jobs. The plaintiff contended that the newly developed method of applying paint with rollers is faster and results in no deterioration of the standards of the trade. The defendant local union maintained that the application of paint with rollers is injurious to the health and safety of painters and fails to furnish either the long-lasting or finely finished quality characteristic of brush painting. *Held,* that the application of paint by means of rollers is not injurious to the health and safety of painters, that the contractual prohibition of such method is not a proper object of concerted action, and that the strike activities by defendant local unions should, therefore, be enjoined by a court of equity. *Austin v. Painters District Council,* 339 Mich. 462, 64 N.W. (2d) 550 (1954).

It is well settled that the object of peaceful concerted action by unions must be proper,[1] and that the propriety of these objectives may constitutionally be determined by the state so long as the decision is not arbitrary, discriminatory

[1] Hotel & Restaurant Employees, International Alliance v. Greenwood, 249 Ala. 265, 30 S. (2d) 696 (1947). 4 TORTS RESTATEMENT §§783, 784 (1939).

or in conflict with an applicable federal statute.[2] The judiciary has not been in agreement, however, on the criteria for determining which objectives are proper, and which are not. Some courts have relied on the absence of malice by the union as the controlling factor,[3] while others have held objectives to be proper if their primary purpose is to benefit the worker rather than injure the employer.[4] In the more recent cases the courts have generally agreed that the grounds of decision should be broad considerations of public policy.[5] Decisions continue to differ on exactly which objectives are lawful and which are not,[6] the suppression of the use of labor saving devices as an object of concerted action being no exception. A probable majority of cases arising on this latter issue have held that such an objective is not proper,[7] but a strong minority of courts have held that the suppression of labor saving devices is a legitimate object of concerted action by unions.[8] To the extent that social policy is to be the criterion of determination, the majority view, as represented by the principal case, would seem to be the more sound.[9] Its soundness does not rest so much on the theoretical economic analysis that in the long run labor will benefit from technological change,[10] as on a judicial determination that the gross injury to society will be greater by allowing interference with technological advance than the

[2] International Brotherhood of Teamsters v. Hanke, 339 U.S. 470, 70 S.Ct. 773 (1950); Building Service Union v. Gazzam, 339 U.S. 532, 70 S.Ct. 784 (1950).

[3] National Protective Association v. Cumming, 170 N.Y. 315, 63 N.E. 369 (1902); Scott-Stafford Opera House Co. v. Minneapolis Musicians Assn., 118 Minn. 410, 136 N.W. 1092 (1912).

[4] Overseas Storage Co. v. Chlopsek, 209 App. Div. 834, 204 N.Y.S. 845 (1924); Birmingham Trust and Savings Co. v. Atlanta B. & A. Ry. Co., (D.C. Ga. 1921) 271 F. 743; Parkinson Co. v. Building Trades Council, 154 Cal. 581, 98 P. 1027 (1908).

[5] This theory basically stems from the dissent of Justice Holmes in Vegelahn v. Guntner, 167 Mass. 92 at 106, 44 N.E. 1077 (1896), where he said, "The true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody disputes." 4 TORTS RESTATEMENT §783 (1939).

[6] Teller, "Focal Problems in American Labor Law," 28 VA. L. REV. 727 at 737 (1942).

[7] Dubrow Pure Food, Inc. v. Glazel, 239 App. Div. 844, 264 N.Y.S. 533 (1933); Barr v. Essex Trades Council, 53 N.J. Eq. 101, 30 A. 881 (1894); Haverhill Strand Theatre v. Gillen, 29 Mass. 413, 118 N.E. 671 (1918); 31 AM. JUR., Labor §208 (1940); 6 A.L.R. 918 (1920).

[8] Empire Theatre Co. v. Cloke, 53 Mont. 183, 163 P. 107 (1917); Scott-Stafford Opera House Co. v. Minneapolis Musicians Assn., note 3 supra; Oxley Stave Co. v. Coopers' International Union, (Kan. Cir. 1896) 72 F. 695; Bayer v. Brotherhood of Painters, 108 N.J. Eq. 257, 154 A. 759 (1931). For the application of the Sherman and Clayton Acts, see the interesting decision in United States v. Carrozzo, (D.C. Ill. 1941) 37 F. Supp. 191.

[9] A number of law review articles discussing the controversial case of Opera on Tour v. Weber, 285 N.Y. 348, 34 N.E. (2d) 349 (1941), advocate judicial non-intervention in such disputes. See 39 MICH. L. REV. 665 (1941); 53 HARV. L. REV. 1054 (1940); 90 UNIV. PA. L. REV. 109 (1941). In the Weber case, although the injunction was granted, it was apparently because the striking union (stage hands) had no objective of its own, and was engaging in concerted action to force the company to cease using "canned" music and to hire members of the musicians union.

[10] These arguments have been largely rebutted by such trite but true labor phrases as "In the long run we are all dead," or "Labor's three fundamental objectives are today's breakfast, lunch and supper."

injury to labor by not permitting such interference. Such a policy, however, should have as one of its bases recognition of the fact that protection of workers from the ravages of technological change is one of labor's oldest and most basic objectives,[11] and that, consequently, the removal of concerted action as a weapon to be used directly against these technological changes imposes on society and management the obligation of filling the void so created. Social security and unemployment compensation legislation may fulfill some of this responsibility. In addition, a judicial recognition of the distinction between the use of concerted action to prevent the introduction of labor saving devices, and the use of concerted action to obtain contract provisions, the purpose of which is to repair the disruptions caused by the introduction of such devices, would also help to fulfill the obligation.[12] An additional consideration is the extent to which a union should be allowed to act in protecting the professional standards of the trade. It may be argued that to the extent that the quality of the product is reduced by the use of labor saving devices, there is a social advantage in allowing the use of concerted action to prohibit the institution of such devices.[13]

John F. Dodge, Jr., S.Ed.

[11] DAUGHERTY, LABOR PROBLEMS IN AMERICAN INDUSTRY 51-54, 470 (1948), contains a brief history of labor opposition to the use of machinery.

[12] For union proposals designed to mitigate technological unemployment see Temporary National Economic Committee Hearings, 76th Cong., 3d sess., "Technology and Concentration of Economic Power," part 30 at pp. 16506-16507 (1940). Some examples are severance pay, profit sharing in technological advances, restriction in the number of employees who may be laid off in any period, and a guaranteed annual wage.

[13] It is unfortunate that the court in the principal case did not see fit to consider this problem more adequately. There was apparently evidence that the use of pans and rollers instead of brushes leads to a lower quality of finished painting. On the other hand, it is interesting to note that serious unemployment may result from the failure to recognize a consumer demand for a cheaper or a lower quality product, for in many cases the consumer's only alternative is to do it himself.